

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CAPTAIN DARRELL OBER,	:	CIVIL ACTION NO. 1:04-CV-1669
	:	
Plaintiff	:	(Judge Conner)
	:	
v.	:	
	:	
COMMISSIONER JEFFREY B. MILLER, et al.,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 15th day of October, 2008, upon consideration of plaintiff's nunc pro tunc motion (Doc. 111) to concur in defendants' summary judgment motion only on the issue in the above-captioned matter currently slated for trial in December 2008, which appears to seek voluntary dismissal of plaintiff's remaining claim alleging that defendant Jeffrey B. Miller engaged in unconstitutional retaliation by virtue of his failure to promote plaintiff between February 1, 2003 and July 5, 2003, and it appearing that defendants concur in plaintiff's request, (see Doc. 111 ¶ 8), and it further appearing that trial on this issue is scheduled for December 8, 2008 (Doc. 109), it is hereby ORDERED that:

1. The motion (Doc. 111) is CONSTRUED as a motion for voluntary dismissal pursuant to FED. R. CIV. P. 41(a)(2). As so construed, the motion is GRANTED and plaintiff's claim is DISMISSED with prejudice. See FED. R. CIV. P. 41(a)(2) (providing for voluntary dismissal by order of court "at the plaintiff's insistence").
2. The defendants' motion in limine (Doc. 101), currently pending before the court, is DISMISSED as moot.

3. The Clerk of Court is directed to enter JUDGMENT in favor of defendants and against plaintiff on all claims described in Paragraph 1a of the order of court dated December 18, 2007 (Doc. 84). As described therein, those claims are as follows: (a) the right to counsel, unlawful search and seizure, equal protection, and conspiracy claims pursuant to § 1983 against all defendants, (b) the retaliation claim pursuant to § 1983 against defendants Ralph Periandi, John Brown, Leonard McDonald, Charles Skurkis , Coleman McDonough, Robert B. Titler, Robert Mrgich, Jack L. Lewis, and Joanna N. Reynolds, (c) all retaliation claims against defendant Jeffrey B. Miller except those arising from the failures to promote between February 1, 2003 and July 5, 2003, and (d) the false light misrepresentation, defamation, civil conspiracy, and intentional infliction of emotional distress claims pursuant to state law against all defendants. Additionally, the Clerk of Court is directed to enter JUDGMENT in favor of defendants and against plaintiff on plaintiff's claim that State Police Field Regulation 1-1.05 was improperly applied to him, which is more fully described in the memorandum and order of court dated July 21, 2008 (Doc. 99).
4. The Clerk of Court is directed to CLOSE this case.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge